

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 12-00119 SI

Plaintiff,

**PROPOSED AMENDED  
HEIGHTENED PROTECTIVE ORDER**

v.

JOSEPH ORTIZ, et. al,

Defendants.

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On March 1, 2013, the Court held a hearing on the parties' proposed heightened protective orders. As explained at the hearing, the Court intends to issue an amended heightened protective order that incorporates elements from the Government's and the defendants' proposals. The Court believes that this order addresses the concerns articulated by the Government in its objections to defendants' proposal, while also establishing conditions that will permit counsel for the four death-eligible defendants to conduct meaningful review of the discovery at issue.

At the hearing, counsel for the Government requested the opportunity to review the Court's proposed amended heightened protective order and to be able to meet and confer with defense counsel before the protective order is entered. Accordingly, the Court issues this proposed heightened protective order and directs counsel to meet and confer and to notify the Court in a joint letter no later than **5 pm on March 6, 2013**, whether any party has an objection to the proposed protective order, and if there are any objections, the party shall propose alternative language.

**PROPOSED AMENDED HEIGHTENED PROTECTIVE ORDER**

For the reasons set forth in the Court's February 5, 2013 Order, the Court ORDERS the United States to disclose forthwith to counsel for each of the capital defendants, Joseph Ortiz, Victor Flores, Benjamin Campos-Gonzalez, and Justin Whipple, all non-Jencks discovery in the possession of or subject to the control of the Government.

IT IS HEREBY FOUND THAT the need to ensure witness safety justifies the issuance of a heightened protective order governing the dissemination and use of such discovery. For purposes of this Order, non-Jencks Act discovery shall mean discovery that does not consist of statements of a witness as that term is defined in 18 U.S.C. § 3500(e). If the Government has any doubt as to whether a document is Jencks, it should submit it under seal to Magistrate Judge Beeler for determination.

For purposes of this order, any discovery produced pursuant to this order will be referred to as "Heightened Protected Material," and be produced pursuant to the following conditions:

1. The Government shall produce Heightened Protected Material to counsel of record for the four defendants who are currently eligible for the death penalty, i.e., Shawn Halbert and John Philipsborn (counsel for defendant Joseph Ortiz); William Osterhoudt and Richard Mazer (counsel for defendant Victor Flores); Stuart Hanlon and Geoff Rottwein (counsel for defendant Benjamin Campos-Gonzalez); and David Andersen and Richard Tamor (counsel for defendant Justin Whipple), as well as one designated paralegal in the office of each counsel who is working directly under the supervision of the counsel of record. These attorneys and paralegals are collectively referred to as "Covered Persons."

2. At this time, and in order to in order to effectuate the speedy and orderly administration of justice, Heightened Protected Material is being provided for the sole purpose of assisting counsel of record for the four death-eligible defendants in preparing their death-penalty mitigation submissions to the United States Department of Justice. Heightened Protected Material shall not be used for any other purpose, including developing impeachment information against witnesses for use in either the guilt or the penalty phases of the trial. Heightened Protected Material shall not be provided or shown to anyone who is not a Covered Person, including counsel for any co-defendants in the above-captioned matter, and the defendants themselves. Similarly, information contained in Heightened Protected Material and

1 information derived therefrom shall not be disseminated or provided to anyone other than Covered  
2 Persons in any form and by any means. Covered Persons shall not discuss or share information derived  
3 from Heightened Protected Material with anyone other than a Covered Person.

4       3.       Heightened Protected Material shall be marked with the designation “Heightened  
5 Protected Material” or “HPM.” Any discovery so designated by the United States will be subject to the  
6 terms of this Order. Should counsel for any death-eligible defendant believe that a designated document  
7 is not properly Heightened Protected Discovery, s/he shall raise this issue with the United States. If the  
8 parties are unable to agree on the status of a given item of discovery, counsel for the defendant may seek  
9 leave of the Court (through Magistrate Judge Beeler) to de-designate the item. However, all items  
10 designated as Heightened Protected Discovery must be treated as such until de-designated by the  
11 producing party or the Court.

12       4.       The Government shall maintain a set of Heightened Protected Material in a secure  
13 location in the offices of the Federal Public Defender. That location shall be kept locked and accessible  
14 only to Covered Persons. Covered Persons shall not remove, duplicate, or photograph any Heightened  
15 Protected Material. Covered Persons may take physical, but not electronic, notes based on their review  
16 of Heightened Protected Material, but any such notes shall not be duplicated or shown to or shared with  
17 anyone who is not a Covered Person. Each of the counsel of record shall keep any such notes in a single  
18 binder and maintain those notes in a secure and locked location within their offices.

19       4.       Prior to receiving any Heightened Protected Material, each Covered Person shall sign  
20 a copy of this Order acknowledging that he or she: (a) reviewed this Order; (b) understands this Order’s  
21 contents and obligations; (c) agrees to this Order’s terms; (d) understands that failure to abide by this  
22 Order may result in sanctions by this Court; and (e) agrees to submit to the jurisdiction of this Court for  
23 the punishment of any violations of this Order.

24       5.       Any pleadings that include or make reference to information contained in Heightened  
25 Protected Material (such as witness names, statements, or other identifying information) shall be filed  
26 under seal, with access to the sealed information provided only to Covered Persons, the Government,  
27 and the Court.  
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6. This Order shall be binding on any successor counsel for each Authorized Counsel of Record and a copy of this Order shall be transmitted to such successor counsel. Before any successor counsel can review any Heightened Protected Material, successor counsel must review and sign a copy of this Order.

**IT IS SO ORDERED.**

Dated: March 4, 2013



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SUSAN ILLSTON  
United States District Judge

